STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1728

In the Matter of the Welfare
of the Children of:
S. M. S. and R. L. M., Parents.

Filed April 16, 2012
Affirmed
Johnson, Chief Judge

Olmsted County District Court
File No. 55-JV-11-3609

Sherri L. Whalen, Rochester, Minnesota (for appellant S.M.S.)

Mark A. Ostrem, Olmsted County Attorney, Geoffrey A. Hjerleid, Assistant County Attorney, Rochester, Minnesota (for respondent Olmsted County)

R.L.M., Eyota, Minnesota (*pro se* respondent)

Georgiana Castellanos, Rochester, Minnesota (guardian ad litem)

Considered and decided by Wright, Presiding Judge; Johnson, Chief Judge; and Crippen, Judge.[*]

[*]Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

JOHNSON, Chief Judge

The Olmsted County District Court terminated S.M.S.'s parental rights to two children on the grounds that S.M.S. failed to correct the conditions that led to the children's out-of-home placement and that the children were neglected and in foster care. On appeal, S.M.S. argues that the county did not make reasonable efforts to reunite the family. We affirm.

FACTS

S.M.S. is a 35-year-old woman who has given birth to two children, 11-year-old R.K.M. and 7-year-old R.L.M. II. The children's father, R.L.M., was arrested in April 2009 for assaulting S.M.S., and arrested again in September 2009 for assaulting S.M.S. and R.K.M. Olmsted County Community Services became involved with the family after R.L.M.'s second arrest and assisted S.M.S. with developing safety plans for her children. After the second incident, S.M.S. informed the county that she was hiding from R.L.M. at an undisclosed location and that her children were staying with her brother and sister-in-law in the city of Rochester. R.L.M. later was convicted of crimes arising from the April 2009 and September 2009 incidents.

S.M.S. informed the county in November 2009 that she was drinking one half-pint of brandy per day. She was involved in a car accident while intoxicated on December 21, 2009, for which she later pleaded guilty to gross-misdemeanor criminal vehicular operation with an alcohol concentration of .08 or more, a violation of Minn. Stat.

§ 609.21, subd. 1(4) (2008). S.M.S. continued to drink heavily in 2010, contrary to the county's safety plans for her children.

On June 23, 2010, the county filed a petition alleging that the children were in need of protection or services (CHIPS). The district court granted the petition and placed the children into emergency protective care. At the time of the petition, the children were still residing with their maternal aunt and uncle in Rochester and had been out of S.M.S.'s care at least three times during the previous nine months.

Alcoholism and mental illnesses consumed S.M.S.'s life for much of 2010. She lived in an inpatient chemical-dependency treatment facility in Hastings from May 27 to June 24, 2010. On June 24, 2010, she moved to a halfway house in Garden City, where she believed that her children could also reside. But the county refused to allow the children to live at the halfway house because of S.M.S.'s unproven sobriety and the facility's distance from Rochester. S.M.S. left the halfway house on July 5, 2010, against staff advice, and moved to Brooklyn Center with a friend.

S.M.S. admitted herself to the psychiatric unit of Abbott Northwestern Hospital in Minneapolis on July 20, 2010. She was intoxicated and disoriented. She stayed in the psychiatric ward until July 27, 2010, when she was transported to an inpatient chemical-dependency program in Elk River. The next day, she began to experience delusions that she was pregnant and entering labor. She returned to Abbott Northwestern Hospital for a second psychiatric evaluation but left again on August 2, 2010. She did not inform either the hospital or the county of her intentions or a new address.

S.M.S. admitted herself to a detoxification center in Hastings on August 6, 2010, and enrolled in the affiliated inpatient chemical-dependency treatment program on August 9, 2010. She refused to sign a privacy release when the county attempted to communicate with the treatment facility on August 12, 2010. She remained at the Hastings chemical-dependency treatment program until September 10, 2010. She then began living in a Rochester halfway house.

On September 23, 2010, S.M.S. and the county agreed to out-of-home placement plans for her children. The children were to live with relatives on a temporary basis while the county and S.M.S. worked toward a permanent plan to reunite the family. The plans stated that the county would help S.M.S. enroll in chemical-dependency treatment; coordinate her mental-health services; help her maintain a home near her children's elementary school; help provide transportation for her and her children to school, therapy, and other appointments; pay for her child care while she attends chemical-dependency treatment; develop safety plans for her and her children; and provide her with urinalysis and breath tests to demonstrate her sobriety. The plans also stated that S.M.S. was required to abstain from alcohol, take medication as prescribed by a psychiatrist, complete chemical-dependency treatment and follow after-care recommendations, complete neuropsychological testing to rule out mental illness, participate in case-planning meetings with her social worker and her children's guardian *ad litem*, not provide independent care to her children until she demonstrates stable sobriety, randomly provide samples of urine for testing, assist in developing safety plans, and sign information releases for the county as requested.

S.M.S. substantially failed to perform her responsibilities under the out-of-home placement plans. She submitted a urine sample on October 10, 2010, that tested positive for alcohol. The halfway house discharged her on October 12 for failing to follow staff directions and failing to meet program requirements. She then moved into a shelter in Rochester on October 15, but that facility evicted her on November 2 after she had a physical altercation with another resident. Her psychiatrist discharged her on November 2 because she had missed too many sessions. S.M.S. moved to Minneapolis on November 10, but she did not provide Olmsted County with her address. She missed urinalysis tests on November 13, 14, and 26 and submitted a diluted sample on November 17. She attended only four of nine scheduled visits with her children between November 7, 2010, and January 2, 2011. She attended a family conference on December 10 while apparently intoxicated.

On December 13, 2010, the county requested permission from the district court to cease efforts to reunite S.M.S. with her children. The county alleged that S.M.S. had made "minimal progress in meeting case plan goals in the seven months that the children have been out of her care." After a hearing, the district court granted the county's request due to S.M.S.'s lack of progress on case-plan goals, her discharges from treatment facilities, her continued drinking, and her failure to meet with mental-health professionals.

S.M.S. continued to struggle with alcoholism in the early months of 2011. During a chemical-dependency assessment on January 26, 2011, she admitted to drinking one to one and one-half pints of brandy five times per week and smoking marijuana twice per

month. S.M.S. stated that she is homeless, unemployed, and in debt; that she spends all day drinking; and that her situation is "horrible," "chaotic," and "dysfunctional."

In the spring of 2011, S.M.S. began to finally show some progress. She enrolled in an inpatient chemical-dependency and mental-health treatment program in St. Louis Park on April 29, 2011. She successfully completed that program. On June 29, 2011, she moved into a sober-housing facility in Richfield. Reference letters from S.M.S.'s parenting-skills teacher and sober-housing manager dated July 22, 2011, state that S.M.S. was generally making "great strides and progress" in her parenting skills and her struggle with alcoholism.

Meanwhile, on May 20, 2011, the county petitioned to terminate S.M.S.'s parental rights to R.K.M. and R.L.M. II. The petition alleged two legal bases: (1) that reasonable efforts had failed to correct the conditions leading to the children's placement, Minn. Stat. § 260C.301, subd. 1(b)(5) (2010), and (2) that the children were neglected and in foster care, *id.*, subd. 1(b)(8) (2010).

The matter was tried for two days in July 2011. R.L.M. appeared for the limited purpose of voluntarily terminating his parental rights to R.K.M. and R.L.M. II. With respect to S.M.S.'s parental rights, the county called one witness, a case manager for Olmsted County Child and Family Services. The children's guardian *ad litem* also testified. S.M.S. testified and called three witnesses: her Alcoholics Anonymous sponsor, a long-time friend, and a fellow patient from the St. Louis Park treatment program.

The district court issued a 25-page order in September 2011, which granted the petition and terminated S.M.S.'s parental rights on both of the alleged bases. With

respect to the first basis for termination, the district court found that the county's efforts had failed to correct one of the conditions leading to the children's out-of-home placement, namely, S.M.S.'s chemical-dependency and mental-health problems and their negative impact on "her ability to care and provide for the children." The district court noted that S.M.S. had only recently completed primary chemical-dependency treatment and was in the midst of aftercare programming. The district court noted some witnesses' optimism that S.M.S. will overcome her problems but nonetheless found that, "[g]iven her failure and inability to" complete multiple treatment programs, "the Court cannot find that her recent improvement supports a finding that [S.M.S.] is or will be a fit parent in the reasonably foreseeable future." The district court also found that S.M.S. only recently began parent-education classes and had not yet completed that programming.

The district court also rejected S.M.S.'s argument that the county had not made reasonable efforts to reunite her with her children. The district court noted that the services offered by the county were nearly identical to the services that S.M.S. utilized after March 2011, which she claimed had resulted in her rehabilitation. But, according to the district court, the county's services were "frequently sabotaged by [S.M.S.'s] hostility, lack of cooperation, unsuccessful discharges from programming, failures to attend appointments, meetings, and parenting time and failure to establish stable housing." The district court noted that S.M.S. "cannot logically assert her own recent efforts show she is adequately rehabilitated . . . and at the same time argue that those same efforts and services were unreasonable when attempted and offered by" the county.

With respect to the second basis for termination, the district court found that the children were neglected and in foster care. The district court also found that the children could not be returned to S.M.S.'s care in the reasonably foreseeable future. At the time of trial, S.M.S. was living in an assisted sober-housing program. The district court also found that S.M.S. had not fully addressed her chemical-dependency and mental-health issues, had not completed parenting classes, and had not obtained suitable housing. The district court also considered the need for permanency in light of the ages of the children and the length of time that the children had lived outside the home. The district court determined that termination is in the best interests of the children.

S.M.S. appeals.

D E C I S I O N

S.M.S. argues that the district court erred by granting the county's petition and terminating her parental rights to her two children. This court reviews the termination of parental rights "to determine whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). "We give considerable deference to the district court's decision to terminate parental rights. But we closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *Id.* (citation omitted). "[W]e will review the district court's findings of the underlying or basic facts for clear error, but we review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *In re Welfare of*

Children of J.R.B., 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). We will "affirm the district court's termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that the county has made reasonable efforts to reunite the family." *S.E.P.*, 744 N.W.2d at 385 (citations omitted); *see also* Minn. Stat. § 260C.317, subd. 1 (2010); Minn. R. Juv. Prot. P. 39.04, subd. 2(a).

I. Failure to Correct

S.M.S. argues that the district court erred with respect to the first basis for termination, that "following the child[ren]'s placement out of the home, reasonable efforts . . . have failed to correct the conditions leading to the child[ren]'s placement." Minn. Stat. § 260C.301, subd. 1(b)(5). On appeal, S.M.S. does not challenge the district court's findings that the conditions that led to the children's out-of-home placement have not been corrected. Rather, she focuses her argument on the reasonableness of the county's efforts to reunite her with her children.

A county's obligation to make reasonable efforts springs from the child-protection statute:

> Once a child alleged to be in need of protection or services is under the court's jurisdiction, the court shall ensure that reasonable efforts, including culturally appropriate services, by the social services agency are made to prevent placement or to eliminate the need for removal and to reunite the child with the child's family at the earliest possible time . . . .

Minn. Stat. § 260.012(a) (2010); *see also In re Children of T.A.A.*, 702 N.W.2d 703, 709 (Minn. 2005). If a parent challenges the reasonableness of a county's efforts, the district court

> shall make findings and conclusions as to the provision of reasonable efforts. When determining whether reasonable efforts have been made, the court shall consider whether services to the child and family were:
>
> (1) relevant to the safety and protection of the child;
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> (2) adequate to meet the needs of the child and family;
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> (3) culturally appropriate;
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> (4) available and accessible;
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> (5) consistent and timely; and
>
> (6) realistic under the circumstances.
>
> In the alternative, the court may determine that provision of services or further services for the purpose of rehabilitation is futile and therefore unreasonable under the circumstances.

Minn. Stat. § 260.012(h); *see also T.A.A.*, 702 N.W.2d at 709.

S.M.S. contends that the county's efforts at reunification "essentially ceased" after the county filed a CHIPS petition on June 23, 2010. She has identified three specific ways in which the county purportedly failed to make reasonable efforts. First, she argues that the county failed to make reasonable efforts at reunification when she resided in a Garden City halfway house from June 24 to July 5, 2010, because the county did not permit her children to live with her. The district court noted that the county and the

guardian *ad litem* did not support removing the children from their foster-care placement with S.M.S.'s brother because it would be disruptive and because there was no assurance that the halfway house could provide appropriate supervision. The district court's order is supported by the evidentiary record. The reasons for not moving the children to the halfway house are consistent with "[t]he paramount consideration" in all CHIPS proceedings, "the health, safety, and best interests of the child." Minn. Stat. § 260C.001, subd. 2(a) (2010).

Second, S.M.S. contends that the county should have petitioned for her civil commitment after it learned of her placement in a Minneapolis psychiatric ward in late July and early August of 2010. It does not appear that S.M.S. presented this argument to the district court. In any event, S.M.S. fails to explain how a civil-commitment proceeding would have accomplished the goals of the out-of-home placement plan or promoted her interest in reunification with her children. Absent such an explanation, it seems more likely that S.M.S.'s civil commitment would have made reunification less likely.

Third, S.M.S. contends that the county should have provided her with taxi fare to travel between and among the Rochester halfway house, the Rochester shelter, and the visitation sessions with her children in October and November 2010. S.M.S. presented the district court with different, evolving versions of this argument at trial and in her post-trial brief. The thrust of the district court's decision is that S.M.S. suffered from chemical dependency and mental illness, not from a lack of transportation. In fact, the record reveals that she was able to travel to and from various treatment programs

throughout the state. There appears to be no causal relationship between a lack of transportation while S.M.S. was in Rochester and her inability to correct the conditions that led to the children's out-of-home placement. *See T.A.A.*, 702 N.W.2d at 709-10 (analyzing whether county's failure to provide services had causal relationship with parenting abilities).

S.M.S. is partially correct when she contends that, at some point in time, the county ceased making efforts to reunite her with her children. In December 2010, the county requested the district court's permission to cease its reasonable efforts at reunification, and the district court granted the request in January 2011. But S.M.S. does not challenge the district court's ruling on that motion and does not contend that the county failed to make reasonable efforts thereafter. Thus, we confine our analysis to the period of time before the district court's January 2011 grant of the county's motion and to the specific contentions raised in S.M.S.'s brief.

The evidence supports the district court's findings and its conclusion that the county made reasonable efforts to provide S.M.S. with services and to reunite her with her children. S.M.S.'s three challenges to the district court's findings are not persuasive. Thus, the district court did not err by terminating S.M.S.'s parental rights to her children on the ground that reasonable efforts had failed to correct the conditions leading to the children's out-of-home placement.

II. Neglected and in Foster Care

S.M.S. also argues that the district court erred with respect to the second basis for termination, that the children were "neglected and in foster care." Minn. Stat.

§ 260C.301, subd. 1(b)(8). "In determining whether a child is neglected and in foster care, the court shall consider, among other factors," the length of time the children have been in foster care, the parent's efforts to adjust the circumstances that led to the children's placement away from home, and the reasonableness of the county's efforts to reunite the family. Minn. Stat. § 260C.163, subd. 9 (2010).

S.M.S. does not challenge the district court's finding that her children were in foster care for more than one year. It appears that S.M.S.'s challenge to the second basis for termination is essentially the same as her challenge to the first basis, namely, that the county failed to make reasonable efforts to reunite her with her children. The reasonableness of the county's reunification efforts is relevant to the second basis for termination because a district court must consider that factor when determining whether children are neglected and in foster care. *See id.* S.M.S. does not identify any reasons why the county failed to make reasonable efforts at reunification beyond the reasons identified above in part I. Thus, for the reasons already discussed, the district court did not err by finding that S.M.S.'s children were neglected and in foster care.

In sum, we conclude that the district court did not err by granting the county's petition and terminating S.M.S.'s parental rights to her children.

Affirmed.